

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KRISTEN PIERSON,

Plaintiff,

- against -

STRAUS NEWSPAPERS, INC.,

Defendant.

Docket No. 17-cv-03062

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Kristen Pierson (“Pierson” or “Plaintiff”), by and through her undersigned counsel, as and for her Complaint against Defendant Straus Newspapers, Inc. (“Straus” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of Rush tribute band Lotus Land, owned and registered by Pierson, a Rhode Island-based photojournalist. Accordingly, Pierson seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Pierson is a professional photojournalist in the business of licensing her photographs to online, print, and television media outlets for a fee, having a usual place of business at 1550 Nooseneck Hill Road, #97, Coventry, Rhode Island 02816. Pierson's photographs have appeared in various publications in and around the United States.

6. Upon information and belief, Straus is a corporation duly organized and existing under the laws of the State of New York, with a place of business at 20 West Avenue, Chester, New York 10918. At all times material hereto, Straus has owned and operated websites at the following URLs: www.westmilfordmessenger.com and www.spartaindependent.com (the "Websites").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. On October 1, 2011, Pierson photographed Rush¹ tribute band Lotus Land (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Pierson is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with the U.S. Copyright Office and was given pending Copyright Registration Number VA 1-849-561.

B. Defendant's Infringing Activities

10. On December 12, 2012 Straus ran an article on www.spartaindependent.com entitled *Lotus Land: The American Rush Tribute comes to Newton Theatre*. See

1. Rush is the name of a Canadian rock music band.

<http://www.spartaindependent.com/apps/pbcs.dll/article?AID=/20121212/ENTERTAINMENT/121219969/Lotus-Land:-The-American-Rush-Tribute-comes-to-Newton-Theatre>. On December 27, 2012, Straus ran an article by the same name on www.westmilfordmessenger.com. See <http://www.westmilfordmessenger.com/apps/pbcs.dll/article?AID=/20121227/ENTERTAINMENT/121229978/Lotus-Land:-The-American-Rush-Tribute-comes-to-Newton-Theatre>. Both articles prominently featured the Photograph. True and correct screenshots of the articles are attached hereto as Exhibit B.

11. Straus did not license the Photograph from Plaintiff for its articles, nor did Straus have Plaintiff's permission or consent to publish the Photograph on its Websites.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST STRAUS)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Straus infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on its Websites. Straus is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the aforementioned acts of infringement by Straus have been willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

16. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover her damages and Defendant's profits pursuant to 17 U.S.C. § 504(b).

17. Defendant's conduct, described above, is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Straus be adjudged to have infringed upon Plaintiff's copyright in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: April 26, 2017
Valley Stream, New York

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